

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELCOMMUNICATIONS AND ENERGY

Complaint of DSCI Corporation	)	
For Declaratory Orders to Ensure	)	Docket No. 05-28
Verizon-Massachusetts Compliance	)	
With Resale Obligations with Respect	)	
To Customer Specific Pricing Contracts	)	

**MOTION OF PETITIONER DSCI CORPORATION TO COMPEL  
DISCOVERY RESPONSES FROM VERIZON-MASSACHUSETTS**

**Introduction**

Pursuant to 220 CMR 1.04(5) and 1.06(6)(c)(4), DSCI Corporation (“DSCI”) moves to compel responses to the following interrogatories propounded by DSCI upon Verizon-Massachusetts (“Verizon”) on June 27, 2005: DSCI 1-6; DSCI 1-7. The requests sought information on Verizon’s processes for (1) reviewing and approving requests by Verizon Retail staff for development of customer-specific pricing (“CSP”) arrangements for its retail customers, and (2) requests by Verizon Retail or existing retail CSP customers to extend, modify or terminate an existing CSP and whether information on such possible changes to a CSP are or will be communicated to a CLEC engaged in reselling such CSP from Verizon. Both requests are closely tied to issues raised in DSCI’s Complaint and Pre-filed Testimony and will assist the Department in deciding the issues in dispute. The Department should order Verizon to provide complete responses to both interrogatories.

### **Text of the DSCI 1-6 and 1-7 Requests and Responses**

The DSCI Request and Verizon Response to DSCI 1-6 read as follows:

#### **Request**

Please provide a detailed description of the process and associated maximum time frames applied to requests by Verizon Retail for approval of CSP pricing to an existing or new Verizon retail enterprise customer. If the time frames applicable to processing Retail CSP pricing requests differ from those in the Proposed CSP Process for resale of CSPs by CLECs, please explain the basis for such differences.

#### **Reply**

Verizon objects to this request on grounds that it seeks information that is irrelevant to the resolution of the issues before the Department in this case. The process and maximum time frames by which Verizon provides CSP pricing to its existing or new Enterprise customers is irrelevant as a predictor of the process that should apply to a CLEC request to resell an existing Verizon CSP, which, as discussed in the Pre-Filed Testimony of Pamela McCann (at pp. 3-5), requires coordination between Verizon's Retail and Wholesale organizations.

The DSCI Request and Verizon Response to DSCI 1-7 read as follows:

#### **Request**

Please provide a detailed description of the process and associated maximum time frames followed by Verizon Retail in seeking or responding to customer requests to extend, modify or terminate an existing CSP. If a Retail CSP subject to extension, modification or termination discussions is being resold to a CLEC, does Verizon intend to provide notice of the impending changes to the reselling CLEC. If so, please describe the nature of the proposed notices to the CLEC.

#### **Reply**

Verizon objects to this request on grounds that it seeks information that is irrelevant to the resolution of the issues before the Department in this case. The process and maximum time frames by which Verizon responds to a retail customer's request to extend or modify an existing Retail CSP is irrelevant as a predictor of the process that should apply to a CLEC request to resell an existing Verizon CSP, which, as discussed in the Pre-Filed Testimony of Pamela McCann (at pp. 3-5), requires greater coordination between Verizon's Retail and Wholesale organizations. Moreover, Verizon does not have a legal obligation to, nor does it intend to provide notice of discussions of extensions, modifications or terminations of retail CSPs.

## Argument

Requests DSCI 1-6 and 1-7 seek information relevant to the issues in this Complaint and should be responded to in full by Verizon.<sup>1</sup> DSCI seeks declaratory rulings concerning Verizon's unreasonable and unlawful practices that have delayed and prevented DSCI from reselling CSP contracts and similar arrangements to DSCI end user customers, as required by federal and state law and Verizon's interconnection agreements and tariffs.<sup>2</sup> In addition to the specific claims that Verizon has imposed unreasonable class restrictions on resale of Verizon's retail CSP with the Commonwealth of Massachusetts ("COMA Contract"), DSCI's Complaint and Dandley Pre-filed Testimony include detailed allegations regarding Verizon's failure to provide timely and complete responses to DSCI's requests for disclosure of the pricing, terms and conditions of a particular CSP needed to evaluate whether it could be resold. The latter procedural claims are the subject of the interrogatories in question.

DSCI 1-6. DSCI's Pre-filed Testimony contrasted the months of delays experienced by DSCI with respect to getting complete answers from Verizon regarding its request to resell CSPs with the relatively speedy process by which Verizon Retail secures internal approvals to offer CSPs to its retail customers. DSCI recommended that

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<sup>1</sup> See 220 CMR 1.06(6)(c)(1)(discovery "permits parties and Department to gain access to all relevant information in an efficient and timely manner...[and] is intended to reduce hearing time, narrow the scope of issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled"); see also Mass. R. Civ. P. 26c()("[p]arties may obtain discovery regarding any matter not privileged, relevant to the subject matter involved in the pending action").

<sup>2</sup> Complaint, *passim*; see 47 U.S.C. § 251(c)(4)(imposing obligation on incumbent local exchange carriers ("ILECs") to resell to requesting competitive local exchange carriers ("CLECs") any telecommunications service offered at retail); 47 CFR 51.613 (established limited restrictions on resale that ILECs may lawfully impose and precluding other limitations unless provided to be "reasonable and nondiscriminatory"). See also, e.g., G.L. c. 159, §§ 14, 16 (prohibiting unjust, unreasonable and unjustly discriminatory rates and practices of common carriers).

the Department order Verizon to adopt a timetable for CLEC requests similar to that which Verizon provides to itself.

Instead of disclosing its internal processes for CSP approvals and comparing them to its proposed processes for CLEC CSP resale approvals, as requested in DSCI 1-6, Verizon declared that DSCI's request was irrelevant "as a predictor of the process that should apply to a CLEC" and refused to provide the requested information. This objection is not well supported in light of the issues pleaded in the Complaint and Pre-filed Testimony. The Dandley Testimony made clear its view, based on information from Mr. Dandley and other DSCI personnel familiar with Verizon internal procedures, that the processes were indeed similar. DSCI should be allowed to secure information from Verizon to confirm its contentions and recommendations.

Additionally, Verizon's internal CSP approval processes are important to ensure that Verizon is not providing itself with unreasonably favorable treatment, in violation of federal and state nondiscrimination law. This concern is specifically highlighted in the Complaint, which outlines that Verizon Retail sought and received internal approval to offer a CSP to one of DSCI's retail customers (Colonial) during the period while DSCI was trying -- without success -- to receive confirmation from Verizon as to the CSPs it could resell to serve Colonial. If Colonial had not been firmly committed to DSCI, it could well have chosen to take Verizon's "bird in the hand" offer while DSCI was waiting for Verizon to respond to DSCI's CSP resale request. If Verizon's internal CSP approval response dates are substantially shorter than the 60 day period Verizon proposes for responding to CLEC CSP requests, as DSCI believes it is, Verizon could have a similar and unwarranted advantage over its CLEC competitors.

For all of these reasons, DSCI and the Department should be entitled to disclosure of the underlying relevant facts needed to evaluate DSCI's contentions and Verizon's counter-arguments.

DSCI 1-7. This request seeks information regarding the processes Verizon employs when Verizon Retail or a CSP retail customer seek to extend, modify or terminate an existing resold CSP and whether Verizon does (or plans to) provide notice of such impending changes to the CLEC that is reselling that CSP. Verizon again objected on grounds it was irrelevant as a "predictor" of the process to be applied to a CLEC request to resell a Verizon CSP and, moreover, stated that Verizon would not provide any notices to a CLEC of impending changes in a CSP. Verizon's response highlights the need for a complete response to DSCI 1-7 in two main respects.

First, the amount of notice a CLEC will receive concerning changes to a CSP it is reselling has a significant bearing on the reasonableness of Verizon's proposed time periods for responding to a CLEC's request for disclosure of the complete price, terms and conditions for resale of a CSP. If Verizon or its customer elect to terminate a CSP being resold or amend a resold CSP with no or minimal notice to the CLEC reselling that agreement, the CLEC and its customers would face a potential loss of service at resold rates for the time period it would take for the CLEC to confirm that the modified CSP is suitable or identify another CSP for resale and for Verizon to provide a complete response to the CLEC's request to resell such new or modified CSP. A complete lack of notice to a CLEC of potential changes to a CSP (as Verizon apparently intends to provide, based on its partial response) strengthens DSCI's arguments for a prompt 14 day maximum turn around period for Verizon to respond to a CSP resale request.

Second, as a matter of reasonable practices and avoidance of unfair discrimination, Verizon should be required to disclose to DSCI and the Department the time periods and processes Verizon follows or will plan to follow with a retail CSP customer leading up to termination of an existing CSP. This will allow DSCI and other CLECs to make educated business decisions regarding the timing in which they should request access to the same or different CSP when a CSP is approaching its scheduled termination date. The information also is needed to inform DSCI's recommendations regarding the processes Verizon proposes to adopt for CSP resale requests, as discussed above.<sup>3</sup>

### **Conclusion**

Accordingly, for the reasons discussed above, DSCI requests that the Department order Verizon to provide complete responses to interrogatories DSCI 1-6 and 1-7.

DSCI CORPORATION

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<sup>3</sup> DSCI does not concede that Verizon has no legal obligation to provide notice of discussions relative to extensions, modifications or terminations of retail CSPs that are resold to a CLEC, as Verizon controls in the response. While Verizon's claim does not affect the arguments seeking to compel complete responses, DSCI reserves rights to address Verizon's claim later in this proceeding.